

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

~~HANUARY~~
OCTOBER TERM, 1904-1905

No. 1498.

No. 6, SPECIAL CALENDAR.

ANNIE C. GUTHRIE, APPELLANT,

vs.

JANE E. WELSH AND ROBERT BOUCHER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

ANNIE C. GUTHRIE, Appellant, }
 vs. } No. 1498.
JANE E. WELSH ET AL. }

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11532.

Burton Macafee, Attorney.

Supreme Court of the District of Columbia, Holding a Probate Court.

To the honorable the judges :

The petition of Mary Teresa Spalding and Annie C. Guthrie, citizens of the United States, residents of Washington, District of Columbia, respectfully sheweth that your petitioners are the executrices named in the last will and testament of Ann E. Coates, late of the District of Columbia, deceased. That the said deceased was by birth a citizen of the United States and was at the time of her death, and had been for many years immediately previous to her death, an inhabitant of the city of Washington, District of Columbia, and departed this life in said city of Washington, District of Columbia, at her home No. 1328 Q street, N. W., on the 15th day of May last past. That said last will and testament of said deceased relates to both real and personal estate; the estimated value of the realty is \$8500.00 and of the personalty is \$3500.00, which latter consists of bonds and some little furniture and a few household goods now located in her late dwelling, No. 1328 Q street, N. W., Washington District of Columbia.

Your petitioners further show that the said Ann E. Coates, deceased, was a widow and left no heir by descent; that both her father and mother died many years ago; that the only brothers and sisters that she ever had were of the full-blood and were Enoch J. Spalding, deceased, leaving children,—John Spalding, deceased, leaving neither widow nor children,—Elexius Spalding, who left home over fifty years ago, was reported to have died shortly
2 after he left home, has never since been seen or heard from by his relatives and is believed to be dead and not to have left either widow or children,—Jane E. Welsh, widow, now residing in the city of Washington, District of Columbia,—Mary Spalding, who died in infancy, and Katharine Boucher, deceased, leaving no husband, but believed to have left several children.

Your petitioners further show that the heirs and next of kin of the said Ann E. Coates, deceased, are the five children, all of full age, of Enoch J. Spalding, deceased, as follows: Mary Teresa Spalding, spinster,—Helen A. Cost, wife of George J. Cost,—Catharine A. Waters, wife of Morris W. Waters,—Annie C. Guthrie, wife of Edwin Guthrie,—and Enoch R. Spalding (whose wife is Teresa Spalding), all residing in the District of Columbia; and the five children of Katharine Boucher, deceased, who are of full age and are as follows: Cora, married, but husband's name and address unknown,—Annie, married, but husband's name and address unknown,—Blanche, married, but husband's name and address unknown,—Robert, of the District of Columbia, married, but wife's name unknown,—and Joseph, of the District of Columbia, married, but wife's name unknown; and Jane E. Welsh, widow, of Washington city, District of Columbia, as aforesaid.

Your petitioners further show that in said will there is the request that the executrices be not required to give bond;—that there are no debts owed by the testatrix;—that they believe this honorable court has jurisdiction to take proof of and the power to grant letters testamentary incident to the aforesaid last will and testament and to order such further and other proceedings in the premises as are legal and proper, and therefore,

3 Your petitioners pray that citations by publication in the Law Reporter and Evening Star and in due form of law be issued to the proper persons, requiring them, and each of them, at such time and place as shall be in said citations mentioned, to appear and attend the probate of said last will and testament, and that such further and other proceedings in the premises be taken as may be requisite to the proving and recording the said last will and testament and the granting probate and letters testamentary thereon.

Dated this ninth day of June, 1903.

MARY TERESA SPALDING.
ANNIE C. GUTHRIE.

DISTRICT OF COLUMBIA, ss:

On this ninth day of June, in the year nineteen hundred three, personally appeared before me, Mary Teresa Spalding and Annie C. Guthrie, the petitioners named in the foregoing petition, who each being by me separately and duly sworn, did depose and say that she had read the foregoing petition by her subscribed and knew the contents thereof and the same is true of her own knowledge, excepting as to the matters therein stated on information and belief, and as to these matters she believes it to be true.

JOHN R. ROUZER,
Deputy Register of Wills.

(Endorsement: Application for probate of will, &c. Filed by Burton Macafee, attorney. Filed Jun-9 1903. Louis A. Dent register of wills, D. C. Clerk of probate court.)

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11532.

Burton Macafee, Attorney.

Supreme Court of the District of Columbia, Holding a Probate Court.

Petition for Appointment of a Receiver and Letters of Collection.

To the honorable the judges:

The petition of Mary Teresa Spalding and Annie C. Guthrie, citizens of the United States, residents of the District of Columbia, respectfully sheweth that the petitioners are the executrices named in the written instrument purporting to be the last will and testament of Ann E. Coates, late of 1328 Q street, north west, city of Washington, District of Columbia, deceased, propounded for probate in this honorable court, holding a special term for probate business; that the proving of the last will and granting letters testamentary thereunder is delayed by the want of knowledge as to the whereabouts of some of the heirs-at-law, and the necessity of publication made necessary by the disappearance many years ago of one of the testatrix's brothers of whom diligent inquiry has been unable to discover anything, and it is not known whether he be living or dead; that the property of said deceased consists in part of realty, that is to say, of two small houses, No. 1531 and No. 1533, Kingman place, north west, each now under rental of twenty dollars per month, and one small house now unoccupied, the residence of said testatrix, deceased, up to the time of her death; that the petitioners further show it to be necessary that immediate steps be taken for the preservation

of the small personal estate and the collection of rents, and a
5 receiver appointed and letters of collection issued, and they believe that this honorable court has power, in its discretion, to appoint such receiver and issue such letters authorizing the taking, reserving and collecting of the goods, chattels, debts due and personal estate of the said deceased, together with rents now due, and to become due of said estate, and therefore,

Pray that such appointment be made of, and letters issued to Annie C. Guthrie, an executrix named in said last will, pursuant to the law in such cases and the discretion vested in this honorable court.

Dated this ninth day of June, 1903.

MARY TERESA SPALDING.
ANNIE C. GUTHRIE.

DISTRICT OF COLUMBIA, ss:

On this ninth day of June, in the year nineteen hundred three, personally appeared before me, Mary Teresa Spalding and Annie C.

Guthrie, the petitioners named in the foregoing petition, who each being by me separately and duly sworn, did depose and say that she had read the foregoing petition by her subscribed and knew the contents thereof and the same is true of her own knowledge, excepting as to the matters therein stated on information and belief, and as to those matters she believes it to be true.

JOHN R. ROUZER,
Deputy Register of Wills.

(Endorsement: Application for appointment of receiver & collector. Filed by Burton Macafee, attorney. Filed Jun- 9 1903 Louis A. Dent register of wills, D. C. Clerk of probate court.)

6 Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of ANN E. COATES, Deceased. No. 11532, Adm. Doc. 31.

Appointment of Receiver and Collector.

On reading and filing the petition of Mary Teresa Spalding and Annie C. Guthrie for the appointment of a receiver and collector in the estate of Ann E. Coates, deceased, late of the District of Columbia, the same is hereby granted and approved and it is hereby ordered that, pursuant to the prayer of the said petitioners, authority as receiver and petters of collection be issued to Annie C. Guthrie as prayed in said petition, for all the property, goods, chattels, rents, debts due and personal and real estate of Ann E. Coates, deceased, on condition that she give bond in the sum of three hundred (\$300) dollars, this order to remain in full force until further ordered by this court.

THOS. H. ANDERSON, *Justice.*

(Endorsement: Appointment of Annie C. Guthrie receiver and collector Bond \$300. Filed Jun- 10 1903. Louis A. Dent register of wills, D. C. Clerk of probate court.)

7 In the Supreme Court of the District of Columbia, Special Term for Probate Business.

In the Matter of the Estate of ANN E. COATES, Deceased. No. 11532, Adm. Doc.

Answer and Caveat.

The respondents Robert B. Boucher, and Jane — Welch, for answer to the petition of Mary Teresa Spalding and Annie C. Guthrie, filed herein on the 9th day of June, A. D., 1903, praying

the admission to probate and record of a paper writing bearing date the 30th day of March, A. D., 1903, and purporting to be the last will and testament of the said decedent, show to the court as follows:

They admit that the said Ann E. Coates departed this life in the city of Washington, on or about the 15th day of May, A. D., 1903, and that the said paper writing purporting to be her last will and testament was executed by her on or about the day of its date; but, upon their best information, knowledge and belief, they aver that, at the time of the execution of the said paper, the said Ann E. Coates, by reason of her great age, and her mental and physical infirmities, was not of sound or disposing mind, or capable of executing a valid deed or contract, and, further, that her execution of the said paper was obtained by fraud and undue influence then and there practiced upon her, which, by reason of her said mental and physical infirmities, she was unable to resist, and they accordingly deny that the said paper writing is, either in law or in fact, the last will and testament of the said decedent.

ROBERT B. BOUCHER.
JANE E. WELCH.

WILLIAM B. REILLY,
Attorney for Caveators.

DISTRICT OF COLUMBIA, ss:

I, Robert B. Boucher, on oath say that I have read the foregoing answer and caveat by myself and my co-respondents subscribed and I make this affidavit on behalf of them as well as of myself; that I know the contents of the said instrument; that the allegations therein set forth as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

ROBERT B. BOUCHER.

Subscribed and sworn to before me, this 29th day of July, A. D., 1903.

HOWARD M. NORRIS,
Notary Public, D. C.

[NOTARIAL SEAL.]

(Endorsement: Answer and caveat. Clerk will please file. Filed, Jul-31 1903 Louis A. Dent register of wills, D. C. Clerk of probate court.)

9 In the Supreme Court of the District of Columbia, Holding a
Probate Court.

In re the Matter of the Estate of ANN E. COATES, Deceased. No.
11532.

The petition of the caveators, Jane Welsh and Robert Boucher, through their attorneys, Messrs. Reilly and Cole respectfully show to the court as follows:

1. That the decedent Ann E. Coates departed this life in the District of Columbia on the 15th day of May, A. D., 1903; that, to wit, on the 20th day of May, 1903, an alleged last will and testament was filed of the said Ann E. Coates; that, to wit, on the 9th day of June, 1903, the petition of Mary Teresa Spalding and Annie C. Guthrie was filed for the admission to probate and record of the said alleged last will of Ann E. Coates.

2. That your petitioners, to wit, on the 31st day of July, A. D., 1903, filed their caveat to said alleged last will and testament, contesting the validity thereof, which said cause is now pending.

3. Your petitioners further state that the said Ann E. Coates at her death left personal property consisting of United States Government bonds, interest checks, and other personal property of the value of five thousand dollars (\$5,000.00), and also left three parcels of real estate, two of which are under rental of \$20 per month, and the remaining piece, your petitioners are advised, is at present unoccupied but which would bring a rental value of \$20 per month. All of said real and personal property is situated in the District of Columbia, the estimated income of said estate being about \$100 per month.

4. Your petitioners further state that this honorable court, to wit, on the 10th day of June, A. D., 1903, upon the petition filed by Mary Teresa Spalding and Annie C. Guthrie, the executrices named in said alleged last will and testament, and before your petitioners had an opportunity to protest, appointed said Annie C. Guthrie as collector of said estate, said Annie being one of the principal legatees under said last will and testament.

5. Your petitioners further state that the appointment of said Annie C. Guthrie as collector was improvidently granted as against the rights and interests of your petitioners, and that they believe that the interest of all parties to said cause will be best protected by the appointment of the representatives of the respective litigants to said cause.

Therefore, your petitioners pray that the said order of this court passed, to wit, on the 10th day of June, A. D., 1903, appointing said Annie C. Guthrie as collector, be vacated and that the court appoint some person or persons who are not legatees or directly interested in the proceedings of the distribution of said

estate for the preservation of the rights and interests of your petitioners.

WILLIAM B. REILLY,
C. C. COLE,
Attorneys for Caveators.

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

WILLIAM B. REILLY.

Subscribed and sworn to before me this 11th day of August, 1903.

JOHN R. ROUZER,
Deputy Register.

(Endorsement: Petition for the appointment of collectors, etc. Clerk will please file. Filed Aug. 11 1903. Louis A. Dent register of wills, D. C. Clerk of probate court.)

12 Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of ANN E. COATES, Deceased. No. 11532. Administration.

Upon consideration of the petition set for hearing this day for the vacating of the order of this court under and by virtue of which Annie C. Guthrie was appointed collector on the 10th day of June, 1903, was argued by counsel and duly considered by the court and it is this 14th day of August 1903 ordered that the prayer of said petition be and is hereby refused and said petition dismissed.

JOB BARNARD, *Justice.*

(Endorsement: Order dismissing petition for vacating order of court appointing Annie C. Guthrie collector. Filed Aug. 14 1903. Louis A. Dent register of wills, D. C. Clerk of probate court.)

13 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re the Estate of ANN E. COATES, Deceased. Case No. 11532.

Report of Annie C. Guthrie, Collector.

The following named and described property has been found, cared for, and is now in my keeping, to-wit:

Two District of Columbia funding bonds for \$50. each.

One United States coupon bond, four per cent., for \$100.

Four United States registered bonds, four per cent., for \$1000 each.
 One United States coupon bond, 1907, four per cent., for \$100.
 One United States registered bond, four per cent., for \$100.
 Two United States registered bonds, four per cent., each \$500.
 One District of Columbia funding bond, for \$50.
 Two United States registered bonds, three per cent., \$100. each.
 Cash \$3.83.

In house 1328 Q street, N. W., decedent's residence :—

Parlor room :

- 1 Brussels rug, (worn considerably).
- 12 pictures (6 large and 6 small).
- 1 rocking chair (plush).
- 1 sewing chair (splint).
- 7 upholstered chairs.
- 1 lounge.
- 14 1 marble-top centre table.
- 2 hall stands.
- 1 Franklin grate and zinc.
- 1 iron (imitation bronze) clock.
- 5 small vases (mantel).
- 1 round mirror (mantel).
- 10 small ornaments (glass and china).
- 1 china cuspidor.
- 1 Bible.
- 2 sofa rugs (knitted).
- 1 oil lamp.

Dining room :

- 6 pictures (cheap prints).
- 1 softwood painted table.
- 2 rocking chairs, (small, old).
- 1 rocking chair (large, old).
- 4 odd dining room chairs.
- 1 haircloth sofa (old).
- 2 glass lamps (small).
- 1 soft wood writing cabinet.
- 1 Franklin grate.
- 1 iron clock (old).
- 1 sideboard.
- 1 wall mirror.
- 1 carpet (worn out).
- 1 lot of table linen.
- 1 lot of miscellaneous crockery and glassware.
- 1 red tablecloth.

15 Kitchen :

- 1 detached kitchen range and fixtures.
- 3 wooden chairs.

1 lot miscellaneous crockery, stoneware and tinware.
 1 clothes horse.
 3 soft wood kitchen tables.
 1 wash tub.
 1 coal hod.
 No food.
 A little fuel in shed.

2nd story, front room :

1 matting on floor.
 3-piece chamber suit, ash.
 3 cane-seat chairs.
 1 folding rocker.
 1 towel rack.
 1 small washstand.
 1 steamer trunk (cloth).
 4 pieces of set of chamber crockery.
 3 single blankets (in steamer trunk, wool).
 1 hair mattress.
 1 lot cotton goods for bed and change.
 1 pair opera glasses.

2nd story, back room :

1 slat bedstead.
 1 shuck mattress.
 1 feather bed (old).
 16 1 soft wood bureau (old).
 1 sofa (worn out).
 1 washstand (old).
 Some clothing, mostly worn out and badly moth-eaten.

I have received in money different sums, as follows :

June 16.	Rent for 1533 Kingman place for month of June.....	\$20.
" "	" 1531 " May	20.
July 2.	" 1531 " June.....	20.
" 3.	" 1533 " July	20.
Aug. 3.	" 1531 " July	20.
" 5.	" 1533 " August.	20.
Sept. 1.	" 1531 " August.	20.
" 6.	" 1533 " Sept.....	20.
" 10.	" 1328 Q street Sept. 10 to Oct. 10.....	12.30
		<hr/> \$172.30

Interest checks from Government bonds not cashed, as follows :

One check dated May 1, 1903, for \$1.50.

One check dated July 1, 1903, for \$50.00.

One check dated August 1, 1903, for \$1.50.

Coupons on two United States coupon bonds since October, 1902.

I have disbursed for the necessary care of the property as follows:

July 13.	For renovating mattress used by Mrs. Coates.....	\$4.75
July 23.	Water tax for 1328 Q street.....	3.50
July 23.	Water tax for 1531 Kingman place.....	5.33
July 23.	Water tax for 1533 Kingman place	5.33
Aug 6.	Paid bill of Mr. Atchison, for plumbing.....	1.50
Aug. 28.	Moving furniture out of 1328 Q street.....	3.00

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Aug. 31.	Removing trash from yard of 1328 Q street.....	.50
Sept. 4.	Kalsomining kitchen of 1328 Q street.....	1.25
Sept. 9.	Kalsomining dining room, pantry, etc., 1328 Q St...	1.85
Sept. 9.	Washing up three floors, 1328 Q street85
Sept. 9.	Cutting grass, 1328 Q St., front and back yards.....	.75
		<hr/> \$28.61

The house, 1328 Q street, is now rented by the month at \$12.30 per month.

ANNIE C. GUTHRIE,
Receiver and Collector.

CITY OF WASHINGTON, }
District of Columbia, } ss:

Before me, a notary public in and for the District of Columbia and city of Washington, on this 11th day of September, 1903, personally came Annie C. Guthrie, whom I know to be the person she represents herself to be, and having in my presence signed the above report as collector in the matter of the estate of Ann E. Coates, makes oath that the same is true.

[NOTARIAL SEAL.]

GEORGE J. JOHNSTON,
Notary Public, D. C.

(Endorsement: Inventory and first report of receiver & collector. Filed Sep. 11 1903. Louis A. Dent, register of wills, D. C. Clerk of probate court. Filed by Burton Macafee, attorney, Washington, D. C.)

18 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate ANN E. COATES, Deceased. Probate No. 11532.

And now come the attorneys for the caveators and move the court to pass an order herein requiring Annie C. Guthrie, heretofore appointed collector of said estate, to give a new and additional bond as such collector in the penalty of ten thousand dollars.

The grounds of this motion are :

1st. That the appraised value of the bonds and other personal property mentioned in the schedule returned by the said collector amounts to the sum of \$6224.75.

2nd. Because the caveators are informed and believe that the said decedent at the time of her death had on deposit at one of the banks in the city of Washington a considerable sum of money which has not been mentioned in the schedule of assets, the exact amount of which they cannot state.

3rd. Because the only bond given by said Guthrie as such collector is only in the penalty of \$300.00, and wholly inadequate to protect the assets of said estate.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

19 To Burton Macafee, Esq., and Messrs. Barksdale & Wilson,
attorneys for Mary Theresa Spalding and Annie C. Guthrie.

GENTLEMEN : Take notice that the foregoing motion has been filed in the proceedings in the above entitled cause, and that on Tuesday, the 13th day of September, 1904, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the same will be called to the attention of the court and its action asked thereon.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

20 In the Supreme Court of the District of Columbia, Holding a
Probate Court.

In re Estate ANN E. COATES, Deceased. Probate No. 11532.

And now come the attorneys for the caveators herein and move the court to vacate, set aside and annul so much of the order passed herein on the 10th day of June, 1903, as purports to appoint Annie C. Guthrie receiver of the rents and profits of the real estate belonging to the said deceased.

The grounds of this motion are :

1st. That the probate court has no jurisdiction to appoint a receiver of the rents and profits of real estate.

2nd. Because no notice was given to the caveators of the application for the appointment of such receiver.

3rd. For other reasons appearing upon the face of the record.

WILLIAM B. REILLY;
COLE & DONALDSON,
Attorneys for Caveators.

Burton Macafee, Esq., to Messrs. Barksdale and Wilson, attorneys for Mary Theresa Spalding and Annie C. Guthrie.

21 GENTLEMEN: Take notice that the foregoing motion has been filed in the proceedings in the above entitled cause, and that on Tuesday, the 13th day of September, 1904, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the same will be called to the attention of the court and its action asked thereon.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

22 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate ANN E. COATES, Deceased. Probate No. 11532.

And now come the attorneys for the caveators and move the court to formulate issues to be tried in this cause before a jury for the purpose of determining the validity or invalidity of the paper writing propounded as the last will and testament of the said Ann E. Coates, deceased, and to fix a day for the trial of said issues.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

To Burton Macafee, Esq., and Messrs. Barksdale & Wilson, attorneys for Mary Theresa Spalding and Annie C. Guthrie.

GENTLEMEN: Take notice that the foregoing motion has been filed in the proceedings in the above entitled cause, and that on Tuesday, the 13th day of September, 1904, at ten o'clock, in the forenoon, or as soon thereafter as counsel can be heard, the same will be called to the attention of the court and its action asked thereon.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

(Endorsement: Motion for increase of bond of collector, etc. Clerk will please file. William B. Reilly and Cole and Donaldson att'ys — caveators. Filed Sep. 9 1904. James Tanner register of wills, D. C. Clerk of probate court.)

23 In the Supreme Court of the District of Columbia.

In the Matter of the Estate of ANN E. COATES, Deceased. No. 11532.

Upon consideration of the motions of the caveators for the modification of the order passed herein on the 10th day of June, 1903, appointing Annie C. Guthrie as collector of the personal property and receiver of the rents of the real estate of the deceased, and the argument of the counsel thereupon, it is this 16th day of September, 1904, ordered that said order be, and the same is hereby, modified by vacating so much of said order as appoints the said Annie C. Guthrie receiver and authorizes her to collect the rents of the real estate of said deceased, but this order is without prejudice to the application of any party in interest to the equity court for the appointment of a receiver. It is further ordered that the said Annie C. Guthrie give a new bond as collector of said estate in the penalty of eight thousand dollars (\$8000.00) to be approved by the court.

THOS. H. ANDERSON, *Justice*.

Approved
W. & B.

(Endorsement: Order vacating appointment of receiver and modification of order passed June 10th. 1903. Filed Sep. 16 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

24 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate ANN E. COATES, Deceased. No. 11532.

The petition of Jane E. Welsh and Robert Boucher respectfully show- to the court as follows:

1st. That, as they are credibly informed and verily believe, Annie C. Guthrie, heretofore appointed collector of the estate of the said Ann E. Coates, deceased, has not made a full and complete return and report of the personal estate of the said Ann E. Coates, but has in her hands and has omitted to return in the inventory, heretofore filed by her, the sum of \$1234.96, a portion of the assets of said estate.

2nd. That said assets consist of money which was in the National Safe Deposit Savings and Trust Company of the District of Columbia to the credit of the said Ann E. Coates on the 30th day of March, 1903, the date of the alleged execution of the paper writing presented as the last will and testament of the said Ann E. Coates; that on the 1st day of April, 1903, the said Ann E. Coates, while she had not sufficient mental capacity to enable her to make a last will and tes-

tament, or to execute a contract of any kind, or a power of attorney, or to transact any business whatever, was induced by the said

25 Annie C. Guthrie, and others acting in collusion with her, to execute a check or power of attorney purporting to authorize the said Annie C. Guthrie to draw the said money from the said National Safe Deposit Savings and Trust Company; that the said Ann E. Coates received no consideration whatever from the said Annie C. Guthrie, or from any one else, for the giving of said power of attorney, but the same was wholly voluntary on her part and fraudulent upon the part of the said Annie C. Guthrie and others; that on the 17th day of April, 1903, less than one month prior to the death of the said Ann E. Coates, who died on the 15th day of May, 1903, the said Annie C. Guthrie withdrew all of said money, to wit, the said sum of \$1234.96, at one time, from the National Safe Deposit Savings and Trust Company, and your petitioners are advised and believe, and upon such their advice and belief, allege and charge the fact to be that the said money was the money of the said Ann E. Coates, during her lifetime, as much after the giving of said check and the withdrawing of the money from the bank as before, and that at the time of the death of the said Ann E. Coates the said money, although then in the possession or under the control of the said Annie C. Guthrie, was, and still is, the money and assets of the estate of the said Ann E. Coates, and that when the said Annie C. Guthrie and Mary T. Spalding presented to this court their petition asking for the probate of the paper writing purporting to be the last will and testament of the said Ann E. Coates, it was their

26 duty to have set forth in the said petition the existence and the custody by the said Annie C. Guthrie of the said sum of money; but they wholly failed to do so, and have never at any time called the same to the attention of this court in any way, but did in the return of the first inventory of said estate state that the only cash on hand was the sum of \$3.83, thereby concealing from the court and from the distributees of said estate the assets of said estate.

3rd. Your petitioners further show that the said Ann E. Coates, as they are informed and believe, had various papers and other personal property in her possession and in her house at the time of her death which may be valuable and contain important evidence in relation not only to the assets of said estate, but as to the facts and circumstances bearing upon the question of whether at the time of the execution of said paper writing purporting to be her last will and testament she was competent to make the same or transact business of any character, and they are advised and believe that in as much as said Annie C. Guthrie has secreted some of the assets of said estate, she is not the proper person to have the control thereof and of the papers and documents belonging to said estate, but that she should be removed as such collector and the assets and papers belonging to said estate committed to the hands of some impartial person to be appointed by this court as such collector.

In view of the premises, your petitioners pray as follows:

27 1st. That a rule may be entered in this cause against the said Annie C. Guthrie commanding her upon a day certain to appear in this court and show cause, if any she has, why she should not be removed as such collector and some impartial person appointed in her place, and that upon the return and hearing of said return the said Annie C. Guthrie may be removed as such collector, and that some impartial person be appointed in her place and stead, and that she be required to turn over and deliver to the said collector so to be appointed the assets of said estate, including the sum of money hereinbefore mentioned, and also all books, papers and documents, and all other assets of said estate, of all kinds and character, which belong to, or were in the possession of, said Ann E. Coates at the time of her death.

2nd. That petitioners may have such other and further relief in the premises as they may be entitled to and the exigencies of the situation demand.

JANE E. WELSH.
ROBERT BOUCHER.

DISTRICT OF COLUMBIA, *To wit*:

Jane E. Welsh and Robert Boucher, being first duly sworn, depose and say that they are the petitioners named in the foregoing petition by them subscribed; that they have read said petition and know the contents thereof, and that the statements therein made of their own knowledge are true, and those therein made upon
28 information and belief, they believe to be true.

JANE E. WELSH.
ROBERT BOUCHER.

Subscribed and sworn to before me this 6th day of October, A. D., 1904.

[NOTARIAL SEAL.]

HOWARD M. NORRIS,
Notary Public, D. C.

(Endorsement: Petition for removal of Annie C. Guthrie as collector. William B. Reilly and Cole & Donaldson, attorneys. Filed Oct. 7, 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

29 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate ANN E. COATES, Deceased. No. 11532.

Upon consideration of the petition of Jane E. Welsh and Robert Boucher, and the affidavits thereto attached, it is this 7th day of October, 1904, ordered that Annie C. Guthrie do show cause, if any she

has, on or before the 14th day of October, 1904, why she should not be removed from the office and trust of collector of said estate and required to pay over to whoever may be appointed as her successor the money and other property belonging to said estate; provided that a copy of this order be served upon the said Annie C. Guthrie on or before the 10th day of October, 1904.

HARRY M. CLABAUGH,
Chief Justice.

(Endorsement: Rule to show cause. Filed Oct. 7 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

30 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate of ANN E. COATES, Deceased. Probate No. 11532.

For answer to the rule of court issued in this cause on the 7th day of October 1904, Annie C. Guthrie, collector of the estate of said Ann E. Coates, deceased, respectfully shows to the court:

1. That the allegation in the first paragraph of the petition of Jane E. Welsh and Robert Boucher upon which said rule was issued is untrue. That the respondent has made a full and complete return and report of all the personal estate of the said Ann E. Coates and has not omitted to return in the inventory heretofore filed by her the sum of \$1234.96 or any other sum belonging to said estate.

2. That your respondent denies that the assets of said estate consist of money which was in the National Safe Deposit, Savings and Trust Company to the credit of the said Ann E. Coates on the 30th day of March 1903. Respondent further denies that the said Ann E. Coates had not sufficient mental capacity on the 1st day of April 1903, to make a last will and testament or to execute a contract of any kind or a power of attorney or to transact any business whatever. The respondent further denies that she and others acting in collusion with her induced the said Ann E. Coates to execute a check

31 or power of attorney purporting to authorize Annie C. Guthrie to draw the said money from the National Safe Deposit, Savings and Trust Company. Respondent further denies that any power of attorney was given by the said Ann E. Coates to the respondent, but admits as alleged in the petition that the act of the said Ann E. Coates on the 1st day of April 1903, in which she transferred and gave to Annie C. Guthrie the said sum of money, was wholly voluntary on her part but denies any fraud or fraudulent acts on the part of your respondent and others. Respondent further states that on the 1st day of April 1903, Ann E. Coates who was the possessor of account book No. 39085 in the National Safe Deposit, Savings and Trust Company of the District of Columbia, executed an order on the said National Safe Deposit, Savings and Trust Company of the District of Columbia in the following words :

Form of Order to be Used for Payment in Full.

— —, 1903.

The National Safe Deposit, Savings and Trust Company of the
District of Columbia,

Pay to Annie C. Guthrie all the moneys that have been or may
be deposited together with the interest that has and may become
due on account of book No. 39085.

ANNE E. COATES.

Witnessed by

A. L. STAVELY, M. D.
MARY V. FORD.

4, 1, 1903.

32 which said order was signed across the face thereof by Annie
C. Guthrie, and the money then to the credit of the said Ann
E. Coates on account of said book was transferred and delivered to
the said Annie C. Guthrie and by her withdrawn and said account
No. 39085 closed on the 17th day of April 1903. The said order
was the usual one used for such purposes and was given on a page
in said account book in accordance with the custom and require-
ment of the said National Safe Deposit, Savings and Trust Company
of the District of Columbia. A copy of said order is filed herewith
marked "Exhibit A." This respondent denies that said money
after the delivery of the said money to the said Annie C. Guthrie,
was the money of the said Ann E. Coates, but that the same consti-
tuted and was a gift to the said Annie C. Guthrie as it was intended
to be and the said transfer was duly recognized by the said The
National Safe Deposit, Savings and Trust Company of the District
of Columbia. This respondent denies that said money belongs to,
or is in any way, connected with the assets of the estate of the said
Ann E. Coates and she denies that it was the duty of the said Annie
C. Guthrie and Mary T. Spalding to have set forth in the petition
for the probate of the paper writing purporting to be the last will
and testament of the said Ann E. Coates the existence of the said
sum of money, and respondent denies that Mary T. Spalding has or
had any duty to perform in respect to said money. The respondent
further denies that it was her duty to call the same to the at-
33 tention of the court in any way, as the same was in the life-
time of the said Ann E. Coates a voluntary gift to this
respondent.

3. Your petitioner in response to paragraph three of said petition
states that there was no personal property in said estate in her pos-
session and in her home which has come to the knowledge of your
respondent which has not been included in the inventory heretofore

filed by the collector and she denies that she has in any way concealed any of the assets of said estate and denies the allegation that she is not the proper person to have the control thereof and of the papers and documents belonging to said estate. Respondent further states that there are no papers in connection with that estate in the possession or under the control of this collector and there are no papers whatever to which the petitioners are in any wise entitled.

4. Further answering said petition the respondent states that she has done all things required of her as collector and proper to be done by her as collector of the said estate and that the petitioners are not entitled to the relief prayed for in said petition. Your respondent further denies that the petitioners have any grievance for which they are entitled to ask a remedy; that she is advised and believes, that it is improper to thus attempt to raise the issue of the competency of the said Ann E. Coates to make a gift of said money in her lifetime, as the record in this case shows that the issues have been framed and the time fixed for trial thereof as to the mental capacity of the said Ann E. Coates at the time the said petition
34 alleges her to have been incapacitated to make a will or contract. She is further advised and believes that if the petitioners be entitled to any remedy this is not the court in which to seek the same.

And having fully answered your respondent prays that the said rule may be discharged with costs.

ANNIE C. GUTHRIE, *Respondent.*

BURTON MACAFEE,
WILSON & BARKSDALE,
Attorneys for Respondent.

Annie C. Guthrie on oath says she has read the foregoing answer by her subscribed and knows the contents thereof; the statements therein made of her personal knowledge are true and those made upon information and belief she believes to be true.

ANNIE C. GUTHRIE.

Subscribed and sworn to before me this 13th day of October 1904.

GOODWIN Y. ATLEE,
Notary Public.

[NOTARIAL SEAL.]

35 *Form of Order to be Used for Part Payment.*

Not to be filled out but to be copied on a separate piece of paper.

— — —, 190—.

The National Safe Deposit, Savings and Trust Company of the
District of Columbia.

Pay to — — — or order — ¹⁰⁰/₁₀₀ dollars, and charge the
same to the account of Book No. —.

\$—.

— — —.

Exhibit A.

Form of Order to be Used for Payment in Full.

— — —, 1903.

The National Safe Deposit, Savings and Trust Company of the Dis-
trict of Columbia.

Pay to Annie C. Guthrie — all the moneys that have been
or may be deposited, together with the interest that has and
may become due on account of Book No. 39085.

ANNE E. COATES.

Witnessed by—

A. L. STAVELY, M. D.

MARY V. FORD.

4, 1, 1903.

(Endorsement: Answer of collector to rule to show cause. Burton Macafee, Wilson & Barksdale, attorneys for respondent. Filed Oct. 26 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

36 In the Supreme Court of the District of Columbia, Holding a
Probate Court.

In re Estate ANN E. COATES, Deceased. No. 11532.

In consideration of the petition of Jane Welsh and Robert Boucher, caveators herein, praying for the removal of Annie C. Guthrie, as collector of said estate, and the answer of said Guthrie to said petition, and the arguments of counsel thereupon, and it appearing to the court that the said Annie C. Guthrie is interested in the pending litigation and some disinterested party ought to be appointed in her place and stead, it is this first day of November, A. D., 1904, adjudged and ordered that the said Annie C. Guthrie be, and she is hereby removed from her said office and trust, as collector of said estate, and the Washington Loan and Trust Company is appointed as collector thereof. And it is further ordered that the said Annie C. Guthrie do forthwith pay, turn over and deliver to the Washing-

ton Loan and Trust Company all the money, bonds, books, papers, evidences of debt, and all other property or assets belonging to the said estate, now in her possession, or under her control, and that she do, within 15 days from this day, render an account to the court of her trust and doings, as collector as aforesaid.

HARRY M. CLABAUGH,
Chief Justice.

(Endorsement: Order removing Annie C. Guthrie as collector, and substituting Wash. Loan & Trust Filed Nov. 1 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

37 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of ANN E. COATES, Deceased. No. 11532.

Now comes Annie C. Guthrie, by her attorneys, Burton Macafee and Wilson & Barksdale, and requests the register of wills to include the following papers in the preparation of the transcript of record for the Court of Appeals in the special appeal granted herein on the 2nd day of November 1904, viz:

The petition filed by Jane E. Welsh and Robert Boucher October 6, 1904, asking for removal of Annie C. Guthrie as collector.

The rule passed October 7, 1904, requiring Annie C. Guthrie to show cause why she should not be removed as collector.

The answer of Annie C. Guthrie to rule to show cause filed October 26, 1904.

The order removing the said Annie C. Guthrie as collector passed November 1, 1904.

BURTON MACAFEE,
WILSON & BARKSDALE,
Attorneys for Annie C. Guthrie.

38 Messrs. William B. Reilly and Charles C. Cole, attorneys for Jane Welsh and Robert Boucher:

Please take notice that pursuant to the notice of appeal given in open court and the special appeal granted by the Court of Appeals of the District of Columbia, November 2, 1904, that we have this day filed with the register of wills the foregoing request for the preparation of the record in the above entitled cause in said Court of Appeals.

BURTON MACAFEE,
WILSON & BARKSDALE,
Attorneys for Annie C. Guthrie.

November 9, 1904.

Service accepted.

WILLIAM B. REILLY,
COLE & DONALDSON,
Att'ys for Caveators, Jane Welsh and Robert Boucher.

(Endorsement: Request for record and notice of appeal. Burton Macafee Wilson & Barksdale att'ys for Annie C. Guthrie. Filed Nov. 11 1904. James Tanner register of wills D. C. Clerk of probate court.)

39 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate ANN E. COATES, Deceased. No. 11532.

And now come Jane E. Welsh and Robert Boucher, by their attorneys, and request the register of wills, in addition to the papers mentioned in the designation of the attorneys for Annie C. Guthrie, the following papers as part of the record to be used on the hearing of this cause in the Court of Appeals, to wit:

1. Petition for probate of will, filed June 9th, 1903.
2. Application for the appointment of collector and receiver, filed June 9th, 1903.
3. Order appointing collector and receiver, filed June 10th, 1903.
4. Answer and caveat, filed July 31st, 1903.
5. Inventory and first report of receiver and collector, filed September 11th, 1903.

_____,
Attorneys for Caveators.

To Burton Macafee and Wilson & Barksdale, Esquires, att'ys for
Annie C. Guthrie:

40 Take notice that we have filed the above designation of
papers to be embraced in the record for the Court of Appeals
in the above styled case with the register of wills this 14th
day of November, 1904.

WILLIAM B. REILLY,
COLE & DONALDSON,
Attorneys for Caveators.

(Endorsement: Designation of papers for record on appeal for caveators. Clerk will please file. Wm. B. Reilly, Cole and Donaldson for caveators. Filed Nov. 16 1904. James Tanner register of wills, D. C. Clerk of probate court.)

41 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate of ANN E. COATES, Deceased. No. 11532.

Now comes Annie C. Guthrie by her attorneys and requests the register of wills in addition to the papers heretofore designated, to add the following papers as part of the record to be used in the hearing of this cause in the Court of Appeals to wit:

1. Petition for vacation of order June 10, 1903 appointing a collector filed August 11, 1903.
2. Order dismissing petition for appointment of collector filed August 14, 1903.
3. Motion to require collector to give a new and additional bond filed September 9, 1904.
4. Order fixing the new bond filed September 16 1904.

BURTON MACAFEE,
WILSON & BARKSDALE,
Attorneys for Annie C. Guthrie.

Service of a copy accepted this 17th day of November 1904.

WM. B. REILLY,
COLE & DONALDSON,
For Caveators.

(Endorsement: Order designating additional record for Court of Appeals. Burton Macafee Wilson & Barksdale attorneys for Annie C. Guthrie. Filed Nov. 17 1904. James Tanner, register of wills, D. C. Clerk of probate court.)

42

Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate
Court.

DISTRICT OF COLUMBIA, *To wit* :

I, James Tanner, register of wills for the District of Columbia, clerk of the probate court, do hereby certify the foregoing pages, numbered from 1 to 41, inclusive, to be true copies of the originals of certain papers on file in the office of the register of wills, clerk of the probate court, in case No. 11,532 estate of Ann E. Coates, deceased, wherein Annie C. Guthrie is appellant, and Jane E. Welsh and Robert Boucher are appellees, the same constituting a true, and correct transcript of record of certain proceedings had in said cause according to the designations of counsel filed therein and made a part hereof.

I further certify, that the bond for appeal, in the penalty of eight thousand (\$8,000) dollars, was duly filed by said appellant, and approved by said court on the 15th day of November, A. D. 1904.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said probate court, this 23rd day of November, A. D. 1904.

{ Seal Supreme Court of the District of }
{ Columbia, Probate Jurisdiction. }

JAMES TANNER,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

Endorsed on cover: District of Columbia supreme court. No. 1498. Annie C. Guthrie, appellant, vs. Jane E. Welsh *et al.* Court of Appeals, District of Columbia. Filed Nov. 30, 1904. Henry W. Hodges, clerk.

RECEIVED
JAN 12 1904
Mary C. Guthrie

Court of Appeals of the District of Columbia.

ANNIE C. GUTHRIE, Appellant,

vs.

JANE E. WELSH, et al.

No. 1498.

Brief For Appellant.

BURTON MACAFEE,

ANDREW WILSON,

NOEL W. BARKSDALE,

Attorneys for Appellant.

Court of Appeals of the District of Columbia.

ANNIE C. GUTHRIE, APPELLANT,	}	No. 1498.
vs.		
JANE E. WELSH, ET AL.		

STATEMENT OF CASE.

This case comes on for hearing upon a special appeal allowed from an order of the Court below removing a Collector of an estate on the ground that the Collector was interested in the pending will contest litigation.

The facts are that Ann E. Coates died in the District of Columbia, May 15, 1903, leaving a last will and testament dated March 30, 1903, in which she nominated her two nieces, Annie C. Guthrie, appellant herein, and Mary Teresa Spalding, Executrices. On June 9, 1903, the said Annie C. Guthrie and Mary Teresa Spalding filed their petition asking for the probate and record of said will, alleging that deceased left property consisting of realty valued at \$8,500, and personalty valued at \$3,500. (2) At the same time they filed a petition asking for the appointment of the appellant as Collector and Receiver of said estate, (3) and on June 10, 1903, the said Annie C. Guthrie was duly appointed. (4)

On July 31, 1903, Jane Welsh and Robert B. Boucher, appellees, filed their answer to the petition for the probate and record of said will objecting thereto and also a caveat alleging incapacity, fraud and undue influence. (4-5)

On August 11, 1903, the appellees filed another petition alleging that appellant was improvidently appointed Collector of said estate before appellees had an opportunity to protest, and that they believed that the interest of all parties would be best protected by the appointment as Collector of the representative of the respective litigants. (6) Upon hearing the argument of counsel the prayer of this petition was denied and the petition dismissed August 14, 1903. (7)

On September 9, 1904, after the inventory of the Collector was filed, the appellees made a motion to require appellant to give an additional bond and also to annul so much of the order of June 10, 1903, as appointed appellant the receiver of the rents and profits of the real estate. (10-12)

On September 16, 1904, the Court passed an order vacating so much of its order of June 10, 1903, as appointed appellant receiver; and required her to give a new bond as Collector in the sum of \$8,000. (13)

On October 7, 1904, the said appellees in their petition charged upon information and belief that the appellant had not as Collector made a full and complete return and report of the personal estate of the said Ann E. Coates, but that she had in her hands, and had omitted to return in the inventory \$1,234.96, a portion

of the assets of said estate ; that said sum was on March 30, 1903, the date of the will of Ann E. Coates, deposited to the credit of said testatrix in the Trust Company. That on April 1, 1903, the said Ann E. Coates executed a check or power of attorney purporting to authorize the appellant to draw the money from said Company and that thereafter on April 17, 1903, the said appellant did withdraw all of said money, and appellees upon advice and belief charged that the money was the money of Ann E. Coates during her life time, and at the time of the death of said testatrix, the said money, although then in the possession or under the control of said appellant, was, and still is, the money and assets of the estate of Ann E. Coates, and that when the said Annie C. Guthrie and Mary T. Spalding presented their petition for the probate and record of the said will, it was their duty to have set forth the existence, and custody by the said Annie C. Guthrie, of the said money ; and this they wholly failed to do, but, in the inventory, state that the only cash on hand was \$3.83, *thereby concealing from the Court the assets of said estate.* (13-14)

They further alleged upon information and belief that the said Ann E. Coates had various papers and other personal property which might be valuable and contain important evidence in relation, not only to the assets of the estate, but to the facts and circumstances bearing upon the question of whether at the time of the execution of said will, the said Ann E. Coates was competent to make the same or transact business of any character ; and they believed that inasmuch as the said

appellant had secreted some of the assets, that she was not the proper person to have the control of the papers and documents of said estate, but that she should be removed as Collector and that the said assets and papers be committed to the hands of some impartial person. (14-15)

On October 27, 1904, the said Annie C. Guthrie answered the said petition and denied that she had not made a full and complete return and report of the personal estate of the said Ann E. Coates and denied that she had in her hands \$1234.96, a portion of the assets of said estate, and that said sum constituted a part of the assets of said estate. She also denied that the said Ann E. Coates had not sufficient mental capacity April 1, 1903, to make a will or execute a contract. She further denied that she and others acting in collusion induced the said Ann E. Coates to execute a check payable to Annie C. Guthrie for the said money. On the other hand she alleged that on April, 1, 1903, that the said Ann E. Coates transferred and gave to her the said money and that it was wholly voluntary, the said Ann E. Coates having executed the said order as set out in the petition (17) and her signature having been witnessed by two witnesses. That the transfer of said funds was intended to be and did constitute a gift to the said Annie C. Guthrie and that the transfer was duly recognized by the Trust Company on April 17, 1903, when the order was presented, honored, and the account closed. She further denied that there was any personal property of the said Ann E. Coates which had

come to the knowledge of appellant that she had not included in her inventory and alleged that she had not concealed any of the assets and that there were no papers in connection with the estate in her possession or under her control. (16-18)

Upon the hearing of the petition, the rule to show cause issued thereon, and the answer thereto, the Court immediately passed an order removing the said Annie C. Guthrie as Collector and appointing the Trust Company on the ground as set out in the order that "it appearing to the Court that the said Annie C. Guthrie is interested in the pending litigation and that some disinterested party ought to be appointed in her place," (19) and directed her to turn over the property of the estate to said Company. (20)

From this order the appellant asked a special appeal and the same has been granted.

ARGUMENT.

It is respectfully submitted that the Court erred in its action for the following reasons:

1. That it had no power to revoke the letters *ad colligendum* except for causes specified in the Code.
2. That the Code does not prohibit the granting of letters *ad colligendum* to persons interested in the estate.
3. That the concealment of assets and possession of papers are denied by the Collector.
4. That the pleadings raise an issue of title, which the Probate Court has no jurisdiction to try.

1. Court Had No Power.

The power and authority of the Probate Court with reference to the granting and revocation of letters *ad colligendum* are distinctly prescribed in the Code for the District of Columbia as follows:

Sec. 119. It shall have full power and authority * * * to grant and, *for any of the causes hereinafter mentioned*, to revoke letters testamentary, letters of administration, letters *ad colligendum*, and letters of guardianship and to appoint a successor in the place of any one whose letters have been revoked.

The "causes hereinafter mentioned" appear in Sections 123, 124, 125 and 126. None of these Sections are applicable to the facts in this case except Section 124 and that will be considered later.

The Code expressly prescribes the causes for the removal of a Collector and this is a clear case for the application of the maxim "*Expressio unius est exclusio alterius*;" and therefore before letters *ad colligendum* can be revoked the offense charged must be brought within the specified causes.

The office of Collector is put upon the same plane with an executor, administrator and guardian, and carries with it certain emoluments, and hence the position is a valuable right and those upon whom that right has been conferred should not be deprived of it, except as the Code provides.

Williams vs. Williams, 32 Law Reporter, 710.

In re Patten's Estate, 18 D. C., 400.

When the Probate Court has once regularly conferred the appointment, it can not remove the incumbent except for causes recognized by the law as sufficient, and in the manner authorized by statute.

Levering *vs.* Levering, 64 Maryland, 399.

Woerner's Administration, Sec. 268.

Goodwin *vs.* Hooker, 45 Alabama, 613.

When the appointment of an administrator is left to the discretion of the Court, it will be controlled by consideration of the facts in making the selection; but having made the choice, the appointee can be removed only upon proof of such facts as constitute a breach of the trust.

Woerner's Administration, Sec. 269.

2. Interest Does Not Disqualify.

The only qualification of a Collector as prescribed in the Code is as follows :

Sec. 304. Letters *ad colligendum* may be granted to one or more persons in case of a contest in relation to a will, or the absence of the executor from the District, or his delay in qualifying, or for other sufficient causes.

But the Court was fully informed that the appellant was a legatee and executrix under the will, when it appointed her Collector, as appears from the petition for her appointment (3) and the will itself, then filed for probate and record, and it did not consider such interest incompatible with the duties of Collector and so appointed her.

The Court had the interest of appellant in the estate called to its attention again on August 14, 1903, when the appellees asked for a vacation of the order appointing appellant Collector; the express ground of the petition was that the letters *ad colligendum* had been granted improvidently to appellant, one of the principal legatees under the said will. (6) But upon hearing the Court refused to vacate its order and dismissed the petition (7).

The last petition filed by appellees asking for removal *is framed on the theory of concealment of assets, and does not allege interest of Collector in the estate, while the order of removal is based on interest of Collector in the estate, and not concealment of assets.*

3. No Concealment of Assets.

The Court below did not find that there was concealment of assets. If it had done so then it should have ordered an additional inventory to comprehend the assets omitted, and if its order was not complied with, then it should have revoked the letters of the Collector. The provision of the Code is as follows :

Sec. 124. If any person interested in any decedent's estate shall by petition allege that the executor, administrator or collector, has concealed or has in his hands and has omitted to return in the inventory or list of debts any part of his decedent's assets, and the court shall finally adjudge and decree in favor of the allegations of the petition, in whole or in part, it shall order an additional inventory or list of debts, as the case may be, to be returned by the executor, administrator or collec-

tor, and appraisement to be made accordingly, to comprehend the assets omitted, and the court may compel obedience to said order, and if the same is not complied with, revoke the letters testamentary or of administration or of collection and order the bond of the executor, administrator or collector, to be put in suit.

It would seem from this provision of the law that before an order to remove a Collector for concealment of assets can be passed four things must transpire, viz: 1. That a petition be filed alleging concealment of assets. 2. That the Court shall finally adjudge and decree in favor of the allegations. 3. That an additional inventory be ordered. 4. That the order be not complied with.

In the case at bar there was only one of these prerequisites, viz: the filing of the petition. The Court did not decree in favor of the allegations of the petition, nor did it order an additional inventory. Summary removal is not contemplated by the law; but the law provides for removal only after a hearing and the Court is satisfied that there has been concealment of assets and orders the Collector to return an additional inventory, which he fails to do. The Collector in this case was never given an opportunity to return an additional inventory to comprehend the assets alleged to have been omitted.

By reference to the petition for the removal of the Collector, it will be seen that it alleges three grounds for the relief sought. 1. Concealment of assets. 2. Belief that the testatrix had certain papers which may

contain important evidence as to the testatrix's competency to execute the said will or transact business of any character. 3. That as they believed the Collector had secreted some of the assets, she is not the proper person to have control of these papers and documents. Only the first one, however, if true, constitutes cause for removal.

The petition alleged "that the said Ann E. Coates, as they are informed and believe, had various papers and other personal property in her possession and in her house at the time of her death," but there is no allegation that they ever came into the hands of the Collector. It will readily be seen that the object of the petition is not to uncover assets, but to obtain evidence bearing upon the mental condition of the testatrix, for use in the pending will contest. But the answer of the Collector is conclusive on this point because she denies positively that there are any papers in connection with the estate in her possession or under her control.

The appellees would have the Court believe that as they are informed that the Collector has secreted some assets that it follows that she may secrete others that they are informed and believe existed. The answer of the Collector sufficiently explains that she has concealed nothing. Further the allegation of concealment of papers and documents is too general for the court to attempt to enforce. The nature, character, nor purport of the documents is given.

4. Court Without Jurisdiction to Try Title.

The answer of the Collector denies positively that there has been concealment of assets, and asserts title in herself to the money alleged to have been concealed by setting out the facts by which the title was acquired. The pleadings in the case therefore raise a question of *title* and not of *concealment of assets*. That being true, there was no sufficient showing of concealment of assets to warrant the court in revoking the letters of collection for under a recent decision of this court in the case of *Richardson vs. Daggett*, it was decided that the Probate Court has no jurisdiction to try title to property where such title is alleged against the representative of the estate and will leave the parties to the proper law or equity tribunal.

Dougherty vs. Dougherty, 82 Maryland, 229.

Gibson vs. Cook, 62 Maryland, 260.

For the foregoing reasons, it is respectfully submitted that the order appealed from should be reversed.

BURTON MACAFEE,
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Attorneys for Appellant.

COURT OF APPEALS,
DISTRICT OF COLUMBIA.
FILED

JAN 17 1905

Henry W. Hodges;
Esq.

IN THE
Court of Appeals of the District of Columbia,
October Term, 1904.

No. 1498.

No. 26, Special Calendar.

ANNIE C. GUTHRIE, Appellant

vs.

JANE E. WELSH AND ROBERT B. BOUCHER,
Appellees.

BRIEF ON BEHALF OF APPELLEES.

COLE & DONALDSON,
WILLIAM B. REILLY,
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STATEMENT OF CASE.

This is an appeal specially allowed from an order made by the Probate Court removing the appellant as collector of the estate of Ann E. Coates on the ground that she is a person interested in the litigation pending in the court below over the validity of the will of said Ann E. Coates.

Said Ann E. Coates died in the District of Columbia on the 15th day of May, 1903, leaving real estate of the value of at least \$8,500.00, and personal property of the value of \$6,400.00, and leaving surviving her as her heirs at law

and next of kin, one Jane E. Welsh, the appellee, the only surviving sister of said deceased; also Annie C. Guthrie and her brothers and sisters, the children of her deceased brother Enoch J. Spalding; and also the children of Katherine Boucher, a deceased sister, of which the appellee Robert B. Boucher is one.

The said Ann E. Coates left a paper writing, which is alleged to be her last will and testament, dated March 30, 1903, in which the appellant and one Mary Teresa Spalding, her sister, are named as executrices. Said Guthrie and Spalding filed their petition in said Probate Court on June 9, 1903, asking that said alleged will be admitted to probate and record, and in said petition alleged the fact to be that said deceased left real property of the value of \$8,500.00 and personalty of the value of \$3,500.00.

On the 9th day of June, 1903, said Spalding and Guthrie filed their other petition in said Probate Court in which, among other things, they stated "that the proving of the last will and granting letters testamentary thereunder is delayed by the want of knowledge as to the whereabouts of some of the heirs at law, and the necessity of publication made necessary," etc., and thereafter, on the 10th day of June, 1903, upon the *ex parte* presentation of said petition, and for the reason therein stated, the court below passed an order appointing said appellant, Guthrie, receiver and collector of said estate.

That thereafter the appellees filed their answer to the petition of said alleged executrices for the probate of said alleged will, and denied the same to be the will of said Ann E. Coates, and filed a caveat thereto on the grounds of incompetence of said alleged testatrix and undue influence.

That thereafter the said appellant as collector filed her report of the property which came into her hands as such,

in which report she failed to mention a certain sum of \$1,234.96 as part of the assets of said estate.

That thereafter the appellees filed their petition in said Probate Court alleging that they had recently learned there had come into the hands of said appellant as such collector the said sum of \$1,234.96 belonging to the estate of said Ann E. Coates, which said collector had failed to report in her said account, and further set up the fact that the said collector had in her possession various papers and other personal property in her house which might be valuable and contain important evidence in relation to the assets of said estate, and have an important bearing upon the question of the validity of said paper writing, and further alleging that the said appellant was not an impartial and unbiased collector of said estate, but by reason of her adverse interests in said estate she was not a proper person to be appointed to hold the office of said collector, and prayed the court to remove her therefrom.

That thereafter, upon a hearing on said petition, the court below on the 17th day of October, 1904, issued a rule upon said appellant to show cause why she should not be removed as in said petition prayed, to which said petition and rule the said appellant filed her answer and claimed said money adversely to said estate, and thereafter the matter was presented and argued to the court by counsel for the respective parties, and upon consideration whereof, the said court by Mr. Chief Justice Clabaugh passed an order removing the said appellant as collector on the ground that "it appearing to the court that the said Annie C. Guthrie is interested in the pending litigation and some disinterested party ought to be appointed in her place and stead."

It is from the said last mentioned order removing said appellant as collector that said special appeal is taken, and the case is brought before this court for review.

ARGUMENT.

I.

A collector of an estate is appointed by the court to collect in and preserve all the assets of the estate whenever there is to be any considerable delay in the granting of letters of administration or testamentary, and said collector is the personal agent or representative of the Probate Court, and may be removed at any time.

Flora v. Mennice, 12 Ala., 837.

The power of the Probate Court to remove collectors appointed by it is inherent and wholly independent of, and not dependent upon, statutes which may specify some of the causes for which said collector might, or must be, removed.

Woerner on Administrator, 2nd Ed., Section 269.

Taylor v. Biddle, 31st N. C., 1.

Dunham v. Roberts, 27th Ala., 703.

Curtis v. Williams, 33rd Ala., 573.

2.

It will be observed from the statement of facts in this cause that the appellant, in her answer to the petition for her removal, claims that the said sum of \$1,234.96 is no part of the assets of said estate for the reason that she claims that the said deceased, just prior to her death, had given the said sum to her individually, thus showing that the appellant in her individual capacity has an interest adverse to herself as collector of said estate. It is the duty of the collector of said estate to collect in and preserve all the property which constitutes assets of said estate, and it is

apparent that if said appellant were permitted to remain as collector she would take no step to secure from herself, individually, said sum.

It would seem unnecessary to present authorities in support of the proposition that a person who has an adverse interest to the estate cannot consistently occupy the position of collector.

In the case of *Mills v. Mills*, 29 Pac. Rep., 443, the Supreme Court of Oregon, in a case where it appeared that the widow and devisee petitioned for the removal of an administrator for his failure to include in his inventory certain personal property which he claimed to have purchased from the heir held that he should be removed on the ground that his antagonistic interest disqualified him from acting.

In that case the court said at page 444:

“But, in addition to this, it is apparent, from the mere statement of the claim of the petitioner and the administrator, that there is a direct conflict in interest between the estate and Fred H. Mills, and that he cannot act indifferently in the matter. An administrator stands in the position, so to speak, of a trustee, and should be a person who can and will carefully guard the interest of the estate and at least stand indifferent between it and claimants to the property. This Fred H. Mills cannot do, and he must necessarily, if allowed to act as administrator, sacrifice the interests of the estate, if any, in this property, or his own interest, and it is expecting too much of human nature to assume the latter * * * It is sufficient for us to know that the interests of Fred H. Mills as an individual and as administrator are so antagonistic that they cannot be represented by the same person.”

In re Kellberg's Appeal, 86 Pa., St. Rep., 129, the court said at page 133:

"The manifest interests of the administrator is on the side of the company, and there would be not only incongruity, but hazard or delay, mistake or wrong, in leaving him to represent a claim to which his business relations render him directly adverse. Nothing but some controlling necessity would justify his retention in his position, and no such necessity is indicated by the facts presented."

"So, an appointment may be revoked because of the known animosity between the executor and the testator's widow, which prevented the efficient and prudent management of the estate."

Estate of Book, 45 Wis., 397.

"An executor or administrator may be removed because he is adversely interested in the estate."

Williams on Executors, page 702, note.

Simpson v. Jones, 82 N. C., 323.

"Or stands in unfriendly relations to the legatees."
* * * * "Or as the representative of an estate having an adverse interest." * * * "Or is under the undue influence of an important debtor of the estate."

Williams on Executor, same page.

Pending the contest over the validity of the will "It is not proper or customary to appoint either of the parties litigating, collector; an indifferent person should be selected."

In the case of *Footrie v. Hunt*, 4th Bradford (N. Y.), 173 the court said:

"The object contemplated by the statute in the appointment of a special administrator is the collection and preservation of the goods of the deceased whenever a delay is necessarily produced by reason of a contest or any other cause in the grant of letters testamentary or of administration. The matter is *entirely within the discretion of the Surrogate*, which is ordinarily exercised in authorizing the collectorship whenever a long delay appears probable in respect of the grant of administration in chief. The contest in this case relates to the property of the will, and therefore involves the title of the very property, which it is sought to place in the hands of the collector. The case is pending on appeal in the Supreme Court, and if carried to the Court of Appeals cannot be finally determined very briefly. During this litigation there is no reason why the property of the decedent should be left without official care and supervision. The petition states its amount and value at \$20,000.00, and the executor named in the will does not estimate it beyond \$1,500.00. In either case it is of sufficient consequence to be placed in the hands of collector until the controversy be determined. *It is not proper nor customary to appoint either of the parties litigating collector. An indifferent person should be selected.*"

4.

The Probate Court, having authority to appoint administrators and collectors, unquestionably has the power to remove them whenever, in the judgment of the court, it is for the best interests of the estate that such removal should be made.

The Probate Court coming, as it does, into close rela-

tionship with all estates administered, is presumed to acquire and as, matter of fact, does acquire personal knowledge and information with respect to said estates, and is presumed to know, in the matter of appointment of fiduciary officers to manage it, whether said appointment is for the best interests of said estate, and likewise whether it would be to the best interests of said estate to remove any of said officers by reason of facts coming to the attention of the court subsequent to the appointment.

The Probate Court is vested with *discretion in the appointment and removal of collectors*; and the court's order in this respect will not be disturbed on appeal unless there has been a gross abuse of such discretion.

In the case of *Whitehall v. The State*, 19 Ind., 30, the court said:

“When we consider the supervisory power of the Probate Court, which our Common Pleas is, over executors, administrators and guardians, and the duty resting upon that court to vigilantly exercise it, taken in connection with the amount of personal knowledge in the premises, which the court will generally as a matter of course possess, it will at once be conceded that, in a doubtful case, this court should not interfere with the action of the court below.”

In the case of *Deck's Estate v. Gherke*, 6 Cal., 667, the court, at page 69, says:

“The probate judge, as the general supervisor or guardian of the assets of deceased persons, has power by law to suspend or remove an administrator whenever he has reason to believe, either from his own knowledge or from creditable information, that such administrator has fraudulently wasted or mismanaged the estate, or is about to do so, or has become incompetent to manage it.”

"With the exercise of this power, so necessary to the protection and security of estates, an appellate court should not interfere unless it be clearly shown that there has been a gross abuse of discretion by the Probate Court."

In the case of *Williams v. Tobias*, 37 Ind., 345, which was an appeal from an order removing an administrator, the court at page 347 says:

"I do not think there was such an abuse of the *sound legal discretion vested in the court* below as would justify us, under the rules and practice of this court, in disturbing the finding."

In the case of *Dalriddle v. Gamble*, 66 Md., 298, involving the right of the Probate Court to revoke letters previously granted and reappoint an administrator, the court at page 305 says:

"But the power of the Orphans' Court to revoke letters improvidently granted is unquestioned. We can see no reason why that court should not have the discretion to revoke letters previously granted and grant new letters, c. t. a., upon the discovery of a will. The Orphans' Court by our act is given power to administer justice in all matters relative to affairs of deceased persons.' Under this section that court would have the power, if they thought justice of the affairs to the deceased required it, to revoke and reappoint."

In conclusion we submit that the record shows that the appellant, in her individual capacity, claims an interest adverse to the estate, and certainly in that situation could not faithfully perform the trust which is to be expected of a collector of an estate, and that she is a party litigant over the validity of said will, and for either or both of these reasons she could not occupy the position of collector of

said estate, and that the court did right in removing her upon the facts being presented to it; that it is the inherent power of the Probate Court to appoint and remove collectors; and in the appointment and removal of such officers the said court is vested with *discretion* which an appellate court will not disturb unless there is a plain abuse of such discretion, which we submit cannot appear in this case; and that the court has said power of removal, and discretion in reference thereto, wholly independent of the sections 123, 124, 125 and 126 of the Code relied upon by the appellant. The Probate Court has *plenary* power and jurisdiction in all matters relating to the management of estates of decedents, and these sections of the Code do not pretend to limit the power of the court to appoint and remove collectors, but rather tend to vest the court with additional authority to compel compliance with its orders by said officers.

We respectfully submit that the order appealed from should be affirmed with costs.

Respectfully submitted,

COLE & DONALDSON,
WILLIAM B. REILLY,
Attorneys for Appellees.

